

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**05-11803 MLW**SHENIA DANCY-STEWART as Administratrix
of the Estate of EVELINE BARROS-CEPEDA,
MARIA DaROSA and LUIS CARVALHO
Plaintiffs

v.

THOMAS TAYLOR, Jr., and the
CITY OF BOSTON
DefendantsCivil Action
Docket No.MAGISTRATE JUDGE DeinCOMPLAINT AND
JURY TRIAL DEMAND WSDAMOUNT \$ 250SUMMONS ISSUED yesLOCAL RULE 4.1 /WAIVER FORM /MCF ISSUED /BY DPTY. CLK. FOMDATE 9/1/05INTRODUCTION

1. This is an action for monetary damages brought pursuant to 42 U.S.C. §§1983 and 1988 and the Fourth Amendment to the United States Constitution against Thomas Taylor, Jr., (hereinafter, "Officer Taylor"), a police officer of the City of Boston, in his individual capacity and against the City of Boston. Jurisdiction is founded upon 28 U.S.C. §§1331 and 1343 and on the pendent jurisdiction of this Court to entertain claims arising under state law.

2.. It is alleged that Officer Taylor shot and killed Eveline Barros-Cepeda without legal cause or excuse and made an unreasonable seizure of her person and the person of Luis Carvalho and Maria DaRosa, violating their rights under the Fourth Amendments to the United States Constitution and Article XIV of the Massachusetts Declaration of Rights. It is further alleged that these violations were committed as a result of policies and customs of the City of Boston.

PARTIES

3. Eveline Barros-Cepeda, (hereinafter, Ms. Barros-Cepeda) was a black Cape Verdian

who, at all times material to this complaint, lived in Dorchester, Massachusetts with her mother, Domingas DePina.. Ms. Barros-Cepeda was only twenty-five years old when she was shot and killed by Defendant Officer Taylor. She left behind her husband, Carlos Cepeda and her two year old son, Nazee Barros-Cepeda. Domingas DePina, her mother, sought to be and was subsequently appointed legal guardian of Nazee Barros-Cepeda. She has been caring for him since he lost his mother.

4. Plaintiff, Shenja Dancy-Stewart, (hereinafter, "Ms. Dancy-Stewart") is the Administratrix of the Estate of Ms. Barros-Cepeda by appointment of the Suffolk Probate & Family Court.

5. Plaintiff, Maria DaRosa (hereinafter, "Ms. DaRosa") is a black, Cape Verdian and, at all times material to this complaint, a resident of Dorchester, Massachusetts.

6 Plaintiff, Luis Carvalho (hereinafter, "Mr. Carvalho") is a black, Cape Verdian, and, at all times material to this complaint, a resident of Dorchester, Massachusetts.

7 Defendant, Thomas Taylor, Jr., (hereinafter, "Officer Taylor") is and was, at all times material to this complaint, a duly appointed and acting police officer of the police department of the City of Boston, acting under color of law, to wit, under color of the statutes, ordinances, regulations, policies, customs and usages of the Commonwealth of Massachusetts and/or the City of Boston..

8 Defendant, City of Boston, is a municipal corporation, duly organized under the laws of the Commonwealth of Massachusetts and located in Suffolk County. The City of Boston is the public employer of Defendant Officer Taylor.

FACTUAL ALLEGATIONS

9 On September 8, 2002, at around 12:30 A.M., Ms. Barros-Cepeda, Ms. DaRosa and Mr. Carvalho were passengers in the rear seat of a motor vehicle being operated on Dunkel Street

towards Fayston Street in Dorchester, Massachusetts.

10. At that same time, Officer Taylor was on foot at the intersection of Dunkel and Fayston Street.

11. When the motor vehicle turned onto Fayston Street, Defendant Officer Taylor temporarily lost sight of a fellow police officer who had been standing across the street from him. Without first doing anything to verify that the other police officer had been or was being injured by the motor vehicle, Defendant Officer Taylor drew his service revolver and shot at least three bullets in the general direction of the vehicle and its operator.

12. Defendant Officer Taylor's firing at the operator and the motor vehicle under the circumstances violated the then-existing policies of the City of Boston police department on the use of deadly force.

13. There was no threat to Defendant Officer Taylor's life or safety from either the vehicle or its occupants.

14. Defendant Officer Taylor had no knowledge of and did not observe anything that would lead him to believe that anyone the vehicle was armed or dangerous.

15. Defendant Officer Taylor had no prior knowledge and did not observe anything that would lead him to believe that anyone in the vehicle had been or was presently involved in any criminal wrongdoing.

16. Defendant Officer Taylor knew or should have known that he had little or no likelihood of hitting the driver or otherwise bringing the vehicle to a stop by shooting at it and a strong likelihood of causing injury or death to its passengers, bystanders and building residents.

17. One bullet passed through both the vehicle and Ms. Barros-Cepeda's body but did not immediately kill her. She was subsequently pronounced dead at the hospital. A copy of the

death certificate is annexed hereto as "Exhibit A".

18.. While Defendant Officer Taylor's bullets were striking and passing through the motor vehicle, Mr. Carvalho and Ms. DaRosa opened the rear passenger doors and jumped out while it was moving rather than risk being killed or seriously injured by gunfire.

19. As a direct and proximate result of the acts of Defendant Officer Taylor, Ms. Barros-Cepeda suffered the following injuries and damages:

- a) Violation of her constitutional rights under the Fourth Amendment to the United States Constitution to be free from an unreasonable seizure of her person;
- b) Loss of her life;
- c) Physical pain and suffering and emotional trauma and suffering.
- d) Funeral expenses.

18. As a direct and proximate result of the said acts of Defendant Officer Taylor, Mr. Carvalho and Ms. DaRosa suffered the following injuries and damages:

- a) Violation of their constitutional rights under the Fourth Amendment to the United States Constitution to be free from an unreasonable seizure of their person;
- b) Physical pain and suffering and emotional trauma and suffering requiring the expenditure of money for treatment.

19. Nazee Barros-Cepeda has suffered the untimely end of his relationship with his mother, with the corresponding loss of her love, care, affection, nurturing, companionship guidance, advice, assistance and financial and emotional support.

20. Carlos Cepeda has suffered the untimely end of his relationship with his spouse, with the corresponding loss of her services, affection, assistance, society, companionship, comfort, advice and guidance.

21. The actions of Defendant Officer Taylor violated the following clearly established and well settled federal constitutional rights of Ms. Barros-Cepeda; Mr. Carvalho and Ms. DaRosa:

a) Freedom from the unreasonable seizure of their person.

COUNT I 42 U.S.C. §1983 - WRONGFUL DEATH – Officer Taylor

22. Paragraphs 1–21 are incorporated herein by reference as though fully set forth.

23. Plaintiff, Ms. Dancy-Stewart, claims damages against defendant Officer Taylor for the Estate of Ms. Barros-Cepeda for her wrongful death and for the loss of her income, services, protection, care, assistance, society, companionship, comfort, guidance, counsel and advice and for funeral expenses under 42 U.S.C. §1983.

COUNT II 42 U.S.C. §1983 - SURVIVAL ACTION – Officer Taylor

24. Paragraphs 1–13 are incorporated herein by reference as though fully set forth.

25. Ms. Barros-Cepeda was forced to endure great conscious pain and suffering and to incur expenses for the medical treatment she received prior to her death.

26. Ms. Barros-Cepeda filed no action during her lifetime, but under the laws of the Commonwealth of Massachusetts, this action survives and may be asserted by her Estate.

27. Plaintiff, Ms. Dancy-Stewart, claims damages against Officer Taylor for the conscious pain and suffering and necessary medical expenses incurred by Eveline Barros-Cepeda, under 42 U.S.C. §1983.

COUNT III 42 U.S.C. §1983 – UNREASONABLE SEIZURE – Officer Taylor

28. Paragraphs 1–27 are incorporated herein by reference as though fully set forth.

29. Plaintiffs Mr. Carvalho and Ms. DaRosa claim damages against defendant Officer Taylor for their physical pain and emotional trauma and for expenses they incurred for medical

treatment they received as a result thereof.

COUNT IV 42 U.S.C. §1983 – MUNICIPAL LIABILITY – City of Boston

30. Paragraphs 1–29 are incorporated herein by reference as though fully set forth.

31. Prior to September 8, 2002, the City of Boston developed and maintained policies or customs exhibiting deliberate indifference to the constitutional rights of persons in Boston, which caused the violation of Barros-Cepeda's Carvalho's and DaRosa's rights.

32. It was the policy and/or custom of the City of Boston to inadequately and improperly investigate citizen complaints of police misconduct, and acts of misconduct were instead tolerated by the City of Boston, including but not limited to the unlawful, unreasonable and unjustified stopping of moving vehicles by shooting at them and the people inside them.

33. It was the policy and/or custom of the City of Boston to inadequately supervise and train its police officers, including the Defendant Taylor, thereby failing to adequately discourage further constitutional violations on the part of its police officers. The City did not require appropriate in-service training or re-training of officers who were known to have engaged in police misconduct.

34. As a result of the policies and customs, police officers of the City of Boston, including the Defendant Taylor, believed that their actions would not be properly monitored by supervisory officers and that misconduct would not be investigated or sanctioned, but would be tolerated.

35. A Suffolk County Grand Jury returned no indictment against Defendant Officer Taylor for the unjustified, unlawful killing of Ms. Barros-Cepeda and he was neither disciplined nor ordered to receive additional training in the discharge of firearms. In fact, in a press conference following the Grand Jury investigation, Suffolk County District Attorney Daniel Conley blamed

the “unfortunate” death of Ms. Barros-Cepeda on the operator of the motor vehicle. Shortly thereafter, however, Boston Police Commissioner Paul Evans announced a change in the policy of the Boston Police Department regarding the discharge of firearms at moving vehicles.

36. The aforementioned policies and customs demonstrated a deliberate indifference on the part of policymakers of the City of Boston to the constitutional rights of persons within the City, and were the cause of the violations of Ms. Barros-Cepeda, Mr. Carvalho and Ms. DaRosa alleged herein.

CONT V – VIOLATION OF M.G.L. c.12, §11I - WRONGFUL DEATH – Officer Taylor

37. Paragraphs 1 - 36 are incorporated herein by reference as though fully set forth.

38. Defendant Officer Taylor interfered or attempted to interfere by threats, intimidation or coercion with Ms. Barros-Cepeda’s exercise and enjoyment of rights secured under the Constitution and laws of both the Commonwealth of Massachusetts and United States.

39. Plaintiff, Ms. Dancy-Stewart, claims damages against defendant Officer Taylor for the Estate of Ms. Barros-Cepeda for her wrongful death and for the loss of her income, services, protection, care, assistance, society, companionship, comfort, guidance, counsel and advice and for funeral expenses under M.G.L. c. 12 §11I.

CONT VI – VIOLATION OF M.G.L. c.12, §11I – SURVIVAL ACTION – Officer Taylor

40. Paragraphs 1–39 are incorporated herein by reference as though fully set forth.

41. Defendant Officer Taylor interfered or attempted to interfere by threats, intimidation or coercion with Ms. Barros-Cepeda’s exercise and enjoyment of rights secured under the Constitution and laws of both the Commonwealth of Massachusetts and United States.

42. Ms. Barros-Cepeda was forced to endure great conscious pain and suffering and to incur

expenses for the medical treatment she received prior to her death.

43. Ms. Barros-Cepeda filed no action during her lifetime, but under the laws of the Commonwealth of Massachusetts, this action survives and may be asserted by her Estate.

44. Plaintiff, Ms. Dancy-Stewart, claims damages for the conscious pain and suffering and necessary medical expenses incurred by Ms. Barros-Cepeda under M.G.L c. 12, §11I.

COUNT VII VIOLATION OF M.G.L. c.12, §11I – Officer Taylor

45. Paragraphs 1–44 are incorporated herein by reference as though fully set forth.

46. Defendant Officer Taylor interfered or attempted to interfere by threats, intimidation or coercion with the exercise and enjoyment of rights secured under the Constitution and laws of both the Commonwealth of Massachusetts and United States to Ms. DaRosa and Mr. Carvalho.

47. Plaintiffs, Mr. Carvalho and Ms. DaRosa claim damages against defendant Officer Taylor for their physical pain and emotional trauma and for expenses they incurred for medical treatment they received as a result thereof under M.G.L c. 12, §11I.

COUNT VIII – VIOLATION OF M.G.L. c.229 – WRONGFUL DEATH – Officer Taylor

48. Paragraphs 1–47 are incorporated herein by reference as though fully set forth.

49. Defendant Officer Taylor's shooting at the moving vehicle was deliberate, wanton and reckless and in total disregard for the lives and safety of any of the passengers.

50. As a direct and proximate result thereof, Ms. Barros-Cepeda suffered the loss of her life.

51. Plaintiff, Ms. Dancy-Stewart, claims damages against defendant Officer Taylor for the Estate of Ms. Barros-Cepeda for her wrongful death and for the loss of her income, services, protection, care, assistance, society, companionship, comfort, guidance, counsel and advice and for funeral expenses.

COUNT IX – VIOLATION OF M.G.L. c.229 – WRONGFUL DEATH – City of Boston

52. Paragraphs 1–51 are incorporated herein by reference as though fully set forth.
53. Defendant Officer Taylor’s shooting at the moving vehicle was negligent.
54. As a direct and proximate result thereof, Ms. Barros-Cepeda, suffered the loss of her life.
55. At the time of the shooting, defendant Officer Taylor was an employee of the City of Boston police department and was acting during the course and within the scope of his employment.
56. Plaintiff, Ms. Dancy-Stewart, claims damages against defendant City of Boston for the Estate of Ms. Barros-Cepeda for her wrongful death and for the loss of her income, services, protection, care, assistance, society, companionship, comfort, guidance, counsel and advice and for funeral expenses.
57. Ms. Dancy-Stewart served notice of the claim of the Estate of Ms. Barros-Cepeda on the defendant City of Boston by certified mail on or around September 1, 2002, pursuant to M.G.L. c.258. A copy of this letter is annexed hereto as “Exhibit B”.
58. More than six months have passed since the notice of claim was served on the Defendant City of Boston.

COUNT X – VIOLATION OF M.G.L. c.229 – WRONGFUL DEATH – City of Boston

59. Paragraphs 1–58 are incorporated herein by reference as though fully set forth.
60. Prior to September 8, 2002, the City of Boston inadequately and improperly investigated citizen complaints of police misconduct, and acts of misconduct were instead tolerated by the City of Boston, including but not limited to the unlawful, unreasonable and unjustified stopping of moving vehicles by shooting at them and the people inside them.

61. Prior to September 8, 2002, the City of Boston inadequately supervised and trained its police officers, including the Defendant Officer Taylor, thereby failing to adequately discourage further constitutional violations on the part of its police officers. The City did not require appropriate in-service training or re-training of officers who were known to have engaged in police misconduct.

62. As a direct and proximate result thereof, police officers of the City of Boston, including the Defendant Officer Taylor, believed that their actions would not be properly monitored by supervisory officers and that misconduct would not be investigated or sanctioned, but would be tolerated.

63. Plaintiff, Ms. Dancy-Stewart, claims damages against defendant City of Boston for the Estate of Ms. Barros-Cepeda for her wrongful death and for the loss of her income, services, protection, care, assistance, society, companionship, comfort, guidance, counsel and advice and for funeral expenses.

64. Ms. Dancy-Stewart served notice of the claim of the Estate of Ms. Barros-Cepeda on the defendant City of Boston by certified mail on or around September 1, 2002, pursuant to M.G.L. c.258. A copy of this letter is annexed hereto as "Exhibit B".

65. More than six months have passed since the notice of claim was served on the Defendant City of Boston.

COUNT XI SURVIVAL ACTION – City of Boston

66. Paragraphs 1–65 are incorporated herein by reference as though fully set forth.

67. Ms. Barros-Cepeda was forced to endure great conscious pain and suffering and to incur expenses for the medical treatment she received prior to her death.

68. Ms. Barros-Cepeda filed no action during her lifetime, but under the laws of the

Commonwealth of Massachusetts, this action survives and may be asserted by her Estate.

69. Plaintiff, Ms. Dancy-Stewart, claims damages against the defendant City of Boston for the conscious pain and suffering and necessary medical expenses incurred by Ms. Barros-Cepeda.

COUNT XII SURVIVAL ACTION – Officer Taylor

70. Paragraphs 1–69 are incorporated herein by reference as though fully set forth.

71. Ms. Barros-Cepeda was forced to endure great conscious pain and suffering and to incur expenses for the medical treatment she received prior to her death.

72. Ms. Barros-Cepeda filed no action during her lifetime, but under the laws of the Commonwealth of Massachusetts, this action survives and may be asserted by her Estate.

73. Plaintiff, Ms. Dancy-Stewart, claims damages against the defendant Officer Taylor for the conscious pain and suffering and necessary medical expenses incurred by Ms. Barros-Cepeda.

COUNT XIII – GROSS NEGLIGENCE - Officer Taylor

74. Paragraphs 1–73 are incorporated herein by reference as though fully set forth.

75. Defendant Officer Taylor’s conduct was deliberate, willful, wanton and reckless and was the direct and proximate cause of the injuries suffered by plaintiffs Mr. Carvalho and Ms. DaRosa.

76. Plaintiffs, Mr. Carvalho and Ms. DaRosa claim damages against defendant Officer Taylor for their physical pain and emotional trauma and for expenses they incurred for medical treatment they received as a result thereof.

COUNT XIV – GROSS NEGLIGENCE – City of Boston

77. Paragraphs 1–76 are incorporated herein by reference as though fully set forth.

78. Defendant Officer Taylor’s conduct was negligent and was the proximate cause of the injuries suffered by plaintiffs Mr. Carvalho and Ms. DaRosa.

79. At the time of the shooting, defendant Officer Taylor was an employee of the City of Boston police department and was acting during the course and within the scope of his employment.

80. Plaintiffs, Mr. Carvalho and Ms. DaRosa claim damages against defendant City of Boston for their physical pain and emotional trauma and for expenses they incurred for medical treatment they received as a result thereof.

COUNT XV – NEGLIGENCE – City of Boston

81. Paragraphs 1–80 are incorporated herein by reference as though fully set forth.

82. Prior to September 8, 2002, the City of Boston inadequately and improperly investigated citizen complaints of police misconduct, and acts of misconduct were instead tolerated by the City of Boston, including but not limited to the unlawful, unreasonable and unjustified stopping of moving vehicles by shooting at them and the people inside them.

83. Prior to September 8, 2002, the City of Boston inadequately supervise and trained its police officers, including the Defendant Officer Taylor, thereby failing to adequately discourage further constitutional violations on the part of its police officers. The City did not require appropriate in-service training or re-training of officers who were known to have engaged in police misconduct.

84. As a direct and proximate result, police officers of the City of Boston, including the Defendant Officer Taylor, believed that their actions would not be properly monitored by supervisory officers and that misconduct would not be investigated or sanctioned, but would be

tolerated.

85. Plaintiffs, Mr. Carvalho and Ms. DaRosa claim damages against Defendant City of Boston for their physical pain and emotional trauma and for expenses they incurred for medical treatment they received as a result thereof.

COUNT XVI – INFLICTION OF EMOTIONAL DISTRESS – Officer Taylor

86. Paragraphs 1–85 are incorporated herein by reference as though fully set forth.

87. Defendant Officer Taylor’s conduct was negligent and/or extreme, outrageous and intolerable in a civilized society.

88. As a direct and proximate result thereof, plaintiffs, Mr. Carvalho and Ms. DaRosa suffered severe emotional distress and mental anguish and were otherwise greatly damaged.

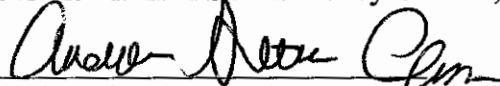
PRAYER FOR RELIEF

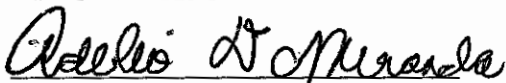
The Plaintiffs pray that this Honorable Court:

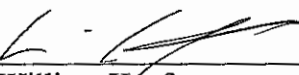
- a) Enter judgment in their favor on each and every count of this Complaint, and,
- b) Award them compensatory damages, and;
- c) Award punitive damages against defendant Officer Taylor: and;
- d) Award them the costs of this action, including reasonable attorney fees pursuant to 42 U.S.C. §1988 and M.G.L. c. 12, §111, and,
- e) Award costs and interest, and;
- f) Award such other and further relief as this Court may deem appropriate.

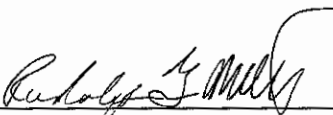
THE PLAINTIFFS DEMAND A JURY TRIAL ON ALL ISSUES SO TRIABLE.


Respectfully submitted,
For the Plaintiff Shenia Dancy-Stewart, Administratrix


Andrew Stockwell-Alpert
11 Beacon Street – Suite 1210
Boston, MA 02108
(617) 720-4244
B.B.O. #481190



Adelio DeMiranda
DeMiranda & Pires, L.L.C.
1212 Hancock Street
Quincy, MA 02169
(617) 479-8222
B.B.O. #120210


William Keefe
390 Centre Street
Jamaica Plain, MA 02130
(617) 983-9200
B.B.O. #556817


Rudolph F. Miller
One McKinley Square
Boston, MA 02109
(617) 723-9500
B.B.O. #


James E. McCall
4 Longfellow Place – Suite 3703
Boston, MA 02114
(617) 720-2900
B.B.O. #327365

For the Plaintiffs,
Luis Carvalho and Maria DaRosa


Manuel R. Pires
DeMiranda & Pires, L.L.C.
1212 Hancock Street
Quincy, MA 02169
(617) 479-8222
B.B.O. #563967

R N^o 73350

The Commonweal of Massachusetts

005475

[illegible]

Roxbury 1868
Dorchester 1870

Day 6⁰⁰ 7⁰⁰ 8⁰⁰ 9⁰⁰ 2003 A.D.

Rv Chapter 314 of the Acts of 1892, "the certificates or attestations

10



Shenia Dancy-Stewart & Associates, P.C.
Attorneys At Law

925 Washington Street
Suite 6
Dorchester, MA 02124
Tel: (617) 288-5454
Fax: (617) 287-2819

Ten Malcolm X Boulevard
Second Level
Boston, MA 02119
Tel: (617) 516-3002
Fax: (617) 287-2819

September 1, 2004

7003 1680 0001 8766 9048

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED
ARTICLE NO. 7003 1680 0001 8766 9048
Mayor Thomas M. Menino
City of Boston
One City Hall Square
Boston, MA 02201

Re: *M.G.L.c. 258 Notice of Claim*
Estate of Evelyn Barros-Cepeda

Dear Mayor Menino:

This office has been appointed Temporary Administrator of the Estate of Evelyn Barros-Cepeda. You are hereby notified, pursuant to the provisions of M.G.L.c. 258, §2, of a claim arising out of the following incident.

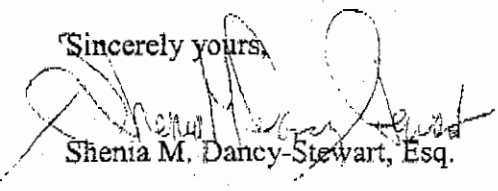
On September 8, 2002, a police officer employed with the City of Boston Police Department fired shots into a motor vehicle that was traveling in Dorchester. A totally innocent passenger, Evelyn Barros-Cepeda, who was seated in the rear of the vehicle was killed as a result of that shooting. She is survived by her husband, Carlos Cepeda, and her minor child, Nazce Barros-Cepeda, the sole heirs of her estate.

The police officer who fired the shots was grossly negligent in doing so and the City of Boston was separately negligent in its training and supervision of their police officers with regard to the discharge of weapons. The wrongful death of Ms. Barros-Cepeda was the direct and proximate result of that negligence of the police officer and the City of Boston.

Mayor Thomas M. Menino
September 1, 2004
Page 2

Be advised that the Estate of Ms. Barros-Cepeda intends to pursue further legal action unless a satisfactory settlement is reached. Feel free to contact this office in this regard at your first convenience.

Sincerely yours,



Shenia M. Dancy-Stewart, Esq.

SMDS:kd



Shenita Dancy-Stewart & Associates, P.C.
Attorneys At Law

925 Washington Street
Suite 6
Dorchester, MA 02124



7003 1660 0003 8755 9048

Mayor Thomas M. Menino
City of Boston
One City Hall Square
Boston, MA 02201

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mayor Thomas Menino
City of Boston
One City Hall Square
Boston, MA 02201

COMPLETE THIS SECTION ON DELIVERY

- A. Signature ☒ Agent ☐ Addressee
- B. Received by (Printed Name) C. Date of Delivery
- D. Is delivery address different from item 1? ☐ Yes ☐ No
If YES, enter delivery address below:

3. Service Type ☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number **7003 1680 0001 8766 9048**
(Transfer from service tag)

PS Form 3811, February 2004

Domestic Return Receipt

475025 09 11 475025

ANDREW STOCKWELL-ALPERT

ATTORNEY AT LAW

109 STATE STREET

BOSTON, MASSACHUSETTS 02109

(617) 720-4244

September 1, 2004

The Honorable Thomas M. Menino
Mayor of the City of Boston
City Hall
Fifth Floor
Boston, MA 02108

RE; M.G.L. c. 258 NOTICE OF CLAIM
CERTIFIED MAIL – RETURN RECEIPT No. 70031010000464933258

Dear Mayor Menino,

This office and the office of DeMiranda & Pires, L.L.C. represent Maria DaRosa. You are hereby notified, pursuant to the provisions of M.G.L. c. 258, s.2 of a claim arising out of the following incident.

On September 8, 2002, a police officer employed with the City of Boston Police Department fired shots into a motor vehicle that was traveling in Dorchester. One passenger, Evelyn Barros-Cepeda, was killed as a result of that shooting. In fear for her life and safety, Maria DaRosa, who was seated in the back, fled from the vehicle while it was still in motion. As a result, she suffered serious bodily injury and mental anguish. The police officer who fired the shots was grossly negligent in doing so and the City of Boston was separately negligent in its training and supervision of their police officers with regard to the discharge of weapons. The injuries suffered by Ms. DaRosa were the direct and proximate result of that negligence of the police officer and the City of Boston.

Be advised that Ms. DaRosa intends to pursue further legal action unless a satisfactory settlement is reached. Feel free to contact this office in this regard at your first convenience.

Very truly yours,


Andrew Stockwell-Alpert

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Thomas M. Menino
Mayor of the City of Boston
City Hall - Fifth Floor
Boston, MA. 02108

2. Article Number

(Transfer from service label)

7003 1010 0004 6493 3258

PS Form 3811, August 2001

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY**A. Signature**

X

☐ Agent☐ Addressee**B. Received by (Printed Name)**

Date of Delivery

D. Is delivery address different from item 1?

If YES, enter delivery address below

☐ Yes☐ No**3. Service Type**☒ Certified Mail☐ Express Mail☐ Registered☒ Return Receipt for Merchandise☐ Insured Mail☐ C.O.D.**4. Restricted Delivery? (Extra Fee)**☐ Yes

2004 SEP 30 PM 2:41
CITY CLERK'S OFFICE
RECEIVED
08 SEP 04 MA



Entered By: RosemarT

Correspondence #: 24227

Correspondence

Subject Claims Vs City (City Clerk)**Date Received:** 9/3/2004**Name:** MARIA DAROSA**Constituent?** Yes**TITLE****Affiliation** ANDREW STOCKWELL-ALPERT**Address:** 109 STATE ST
BOSTON, MA 02109**TONE** Complaint**Routed To:** ROSARIA SALERNO**Reply:****Reply Date:****Comment** ATTY ANDREW STOCKWELL-ALPERT**How Received:** Correspondence

ANDREW STOCKWELL-ALPERT

ATTORNEY AT LAW
109 STATE STREET
BOSTON, MASSACHUSETTS 02109
(617) 720-4244

September 1, 2004

The Honorable Thomas M. Menino
Mayor of the City of Boston
City Hall
Fifth Floor
Boston, MA 02108

RE: M.G.L. c. 258 NOTICE OF CLAIM
CERTIFIED MAIL – RETURN RECEIPT No. 70031010000464933241

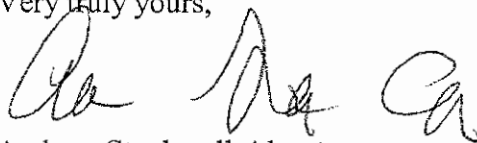
Dear Mayor Menino,

This office and the office of DeMiranda & Pires, L.L.C. represent Luis Carvalho. You are hereby notified, pursuant to the provisions of M.G.L. c. 258, s.2 of a claim arising out of the following incident.

On September 8, 2002, a police officer employed with the City of Boston Police Department fired shots into a motor vehicle that was traveling in Dorchester. One passenger, Evelyn Barros-Cepeda, was killed as a result of that shooting. In fear for his life and safety, Luis Carvalho, who was seated in the back, fled from the vehicle while it was still in motion. As a result, he suffered serious bodily injury and mental anguish. The police officer who fired the shots was grossly negligent in doing so and the City of Boston was separately negligent in its training and supervision of their police officers with regard to the discharge of weapons. The injuries suffered by Mr. Carvalho were the direct and proximate result of that negligence of the police officer and the City of Boston.

Be advised that Mr. Carvahho intends to pursue further legal action unless a satisfactory settlement is reached. Feel free to contact this office in this regard at your first convenience.

Very truly yours,


Andrew Stockwell-Alpert

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Thomas M. Menino
Mayor of the City of Boston
City Hall- Fifth Floor
Boston, MA. 02108

2. Article Number

(Transfer from service label)

7003 1010 0004 6493 3241 /

PS Form 3811, August 2001

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

- ☐
- Agent
-
- ☐
- Addressee

B. Received by (Printed Name)

Date of Delivery

D. Is delivery address different from item?

☐ Yes

If YES, enter delivery address below.

☐ No

3. Service Type

- ☒
- Certified Mail
- ☐
- Express Mail
-
- ☐
- Registered
- ☒
- Return Receipt for Merchandise
-
- ☐
- Insured Mail
- ☐
- C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

RECEIVED
CLERK'S OFFICE
SEP 30 PM 3:41
BOSTON



Entered By: RosemarT

Correspondence #: 24228

Correspondence

Subject Claims Vs City (City Clerk)**Date Received:** 9/3/2004**Name:** LUIS CARVALHO**Constituent?** Yes**TITLE****Affiliation** ANDREW STOCKWELL-ALPERT**Address:** 109 STATE ST

BOSTON, MA 02109

TONE Complaint**Routed To:** ROSARIA SALERNO**Reply:****Reply Date:****Comment** ATTY ANDREW STOCKWELL-ALPERT**How Received:** Correspondence

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) Sherry Dancy-Stewart as Administrator of the estate of Eveline Barros-Lepeda vs. Thomas Taylor

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- I. 160, 410, 470, 535, R.23, REGARDLESS OF NATURE OF SUIT.
- ☒ II. 195, 196, 368, 400, 440, 441-446, 540, 550, 555, 625, 710, 720, 730, *Also complete AO 120 or AO 121 for patent, trademark or copyright cases
740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950.
- III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- IV. 220, 422, 423, 430, 460, 480, 490, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- V. 150, 152, 153.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

no related cases

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES ☐

NO ☒

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES ☐

NO ☒

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES ☐

NO ☐

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES ☐

NO ☒

7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES ☒

NO ☐

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division ☒

Central Division ☐

Western Division ☐

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division ☐

Central Division ☐

Western Division ☐

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES ☐

NO ☒

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME

Andrew Stockwell-Alpert et al

ADDRESS

11 Beacon Street - Suite 1210

TELEPHONE NO.

617 720-4244

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS <i>Shenia Pancy - Stewart as Administratrix of the estate of Irene Harris-Ceneda maria DeRosa and Luis Carvalho</i> (b) County of Residence of First Listed Plaintiff <u>Suffolk</u> (EXCEPT IN U.S. PLAINTIFF CASES) (c) Attorney's (Firm Name, Address, and Telephone Number) <i>Andrew Stockwell - Albert</i> <i>11 Beacon St. Boston MA 02170-4244</i>	DEFENDANTS <i>City of Boston and Thomastaylor</i> County of Residence of First Listed Defendant _____ (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED. Attorneys (If Known) _____
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II. BASIS OF JURISDICTION (Place an "X" in One Box Only) <input type="checkbox"/> 1 U.S. Government Plaintiff <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only) <table style="width: 100%;"> <tr> <td style="width: 33%;">Citizen of This State</td> <td style="width: 33%;">PTF <input checked="" type="checkbox"/> DEF <input checked="" type="checkbox"/></td> <td style="width: 33%;">Incorporated or Principal Place of Business in This State</td> <td style="width: 33%;">PTF <input type="checkbox"/> DEF <input checked="" type="checkbox"/></td> </tr> <tr> <td>Citizen of Another State</td> <td>PTF <input type="checkbox"/> DEF <input type="checkbox"/></td> <td>Incorporated and Principal Place of Business in Another State</td> <td>PTF <input type="checkbox"/> DEF <input type="checkbox"/></td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td>PTF <input type="checkbox"/> DEF <input type="checkbox"/></td> <td>Foreign Nation</td> <td>PTF <input type="checkbox"/> DEF <input type="checkbox"/></td> </tr> </table>	Citizen of This State	PTF <input checked="" type="checkbox"/> DEF <input checked="" type="checkbox"/>	Incorporated or Principal Place of Business in This State	PTF <input type="checkbox"/> DEF <input checked="" type="checkbox"/>	Citizen of Another State	PTF <input type="checkbox"/> DEF <input type="checkbox"/>	Incorporated and Principal Place of Business in Another State	PTF <input type="checkbox"/> DEF <input type="checkbox"/>	Citizen or Subject of a Foreign Country	PTF <input type="checkbox"/> DEF <input type="checkbox"/>	Foreign Nation	PTF <input type="checkbox"/> DEF <input type="checkbox"/>
Citizen of This State	PTF <input checked="" type="checkbox"/> DEF <input checked="" type="checkbox"/>	Incorporated or Principal Place of Business in This State	PTF <input type="checkbox"/> DEF <input checked="" type="checkbox"/>										
Citizen of Another State	PTF <input type="checkbox"/> DEF <input type="checkbox"/>	Incorporated and Principal Place of Business in Another State	PTF <input type="checkbox"/> DEF <input type="checkbox"/>										
Citizen or Subject of a Foreign Country	PTF <input type="checkbox"/> DEF <input type="checkbox"/>	Foreign Nation	PTF <input type="checkbox"/> DEF <input type="checkbox"/>										

IV. NATURE OF SUIT (Place an "X" in One Box Only)				
CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input checked="" type="checkbox"/> 440 Other Civil Rights	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes				

V. ORIGIN (Place an "X" in One Box Only)							
<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify)	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment	

VI. CAUSE OF ACTION	Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): <u>42 USC § 1983</u> Brief description of cause: <u>Unlawful unreasonable seizure - police shooting killing civilian</u>
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VII. REQUESTED IN COMPLAINT:	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ _____ CHECK YES only if demanded in complaint: JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
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VIII. RELATED CASE(S) IF ANY	(See instructions): JUDGE <u>none</u> DOCKET NUMBER _____
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DATE <u>9/1/05</u>	SIGNATURE OF ATTORNEY OF RECORD <u>[Signature]</u>
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FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____